

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

BUCKNELL UNIVERSITY

Employer

and

BUCKNELL DEPARTMENT OF PUBLIC SAFETY
UNION

Case 6-RC-12419

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Bucknell University, is a nonprofit university of higher learning, operating an educational institution at Lewisburg, Pennsylvania. As part of its operations, the Employer employs guards in its Public Safety Department. The Petitioner, Bucknell Department of Public Safety Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a guard unit, consisting of all full-time and regular part-time public safety officers and communications officers.¹ A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the following four issues: whether the petitioning guard union is affiliated with a nonguard union; whether the petitioned-for sergeants are statutory supervisors; whether the petitioned-for communications officers (or dispatchers, as they are commonly known) are guards; and whether the Employer's "casual" employees are eligible to vote.

¹ The petition described the unit as "all full-time and regular part-time guards and communications officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Employer at its Lewisburg, Pennsylvania facility, [excluding] all office clerical employees and professional employees and supervisors as defined in the Act, and all other employees."

The Employer first contends that the petitioning guard union is affiliated with a nonguard union, while the Petitioner contends that any contacts it had with the nonguard union were limited to its formative stage and had thereafter ended. The Employer next contends, contrary to the Petitioner, that the sergeants must be excluded from the petitioned-for unit since they are supervisors, that the dispatchers must be excluded from the petitioned-for unit since they are not guards, and that the "casual" employees must be excluded from the petitioned-for unit since they do not share a community of interest with the regular guards. The unit sought by the Petitioner has approximately 15 employees, while the unit the Employer seeks, in the event that the Petitioner is found to be certifiable, would include about six employees.

I have considered the evidence and the arguments presented by the parties on each of the four issues. As discussed below, I have concluded that the Petitioner is not affiliated with a nonguard union, that the sergeants are not supervisors, that the dispatchers are guards under the Act, and that certain employees work a sufficient number of hours to render them eligible to vote. Accordingly, I have directed an election in a unit that consists of approximately 15 employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operation of its Public Safety Department. Then, I will present in detail the facts and reasoning that support each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer's Public Safety Department is under the overall direction of Director of Public Safety Vincent N. DeCerchio. Reporting to DeCerchio are two administrative lieutenants (herein lieutenants), two sergeants,² six regular public safety officers (herein officers),³

² The Employer currently employs two sergeants. There is a position for a third sergeant, but the position has been vacant since the fall of 2004.

³ This number is based on the Employer's list of employees in the Public Safety Department, which was received into evidence without objection. The record reflects that the parties are in agreement, and I so find, that the public safety officers are guards within the meaning of Section 9(b)(3) of the Act.

Communications Supervisor Nancy Reeser and four regular communications officers who are commonly referred to as dispatchers (herein dispatchers).⁴ The Employer also employs seven public safety officers who work a limited number of hours (herein on-call officers) and three dispatchers who work a limited number of hours (herein on-call dispatchers).

II. THE AFFILIATION ISSUE

As noted, the Employer contends, contrary to the Petitioner, that the Petitioner cannot represent the petitioned-for guard unit because the Petitioner is affiliated with a union that admits nonguards to its membership.⁵

A. Factual Background

The record discloses that in about November or December 2003, one of the Employer's officers, Jason S. Bentley, initially contacted Teamsters Local 764 about representing the officers and dispatchers, and was referred by Teamsters Local 764 to a guard union. Bentley thereafter contacted the guard union, which initially filed a representation petition with the Board, but thereafter withdrew the petition in February 2004.⁶ Bentley was told that the guard union withdrew the petition because the geographic location of the unit and its size made it not cost-effective to pursue representation

⁴ The parties have stipulated, and I so find, that the administrative lieutenants and Communications Supervisor Reeser are supervisors within the meaning of Section 2(11) of the Act in that they have authority to hire, fire, discipline and/or effectively recommend such actions. The parties are also in agreement that Virginia Krebs and Dolores Wolfe are excluded from any unit found appropriate herein since they are office clerical employees, and that building monitor Donald Miller is also excluded from any unit found appropriate herein.

⁵ Based on the facts as set forth in the text below, I find that the Petitioner was formed and exists for the purposes of dealing with the Employer concerning wages, hours and working conditions of the Employer's guards, and is a labor organization within the meaning of Section 2(5) of the Act.

⁶ I have taken administrative notice that International Union, Security, Police and Fire Professionals of America (SPFPA) filed a petition in Case 6-RC-12315 to represent these employees. The petition was filed on February 5, 2004, and withdrawn on February 13, 2004.

According to Bentley, when the guard union declined to pursue representing the employees, the employees just assumed that they would not be represented. But in about September, 2004, the employees again began discussing unionizing, and Bentley again contacted Teamsters Local 764. At that time, Business Agent Michael Hartman⁷ told Bentley that it was possible to make an argument that the employees were a police department, as opposed to guards, so that the Teamsters could represent them. Hartman also told Bentley that the argument might not be successful, and if the employees were found to be guards, the Teamsters could not represent them.

Thereafter, on November 4, 2004, Bentley and some employees met with Hartman at Local 764's hall, to further discuss organizing. At that meeting, the employees present signed a petition that Hartman had created.

After that, Hartman contacted the Regional Office and had a discussion with a Board Agent about the guard status of the employees. As a result of that discussion, a case dealing with guards was faxed by the Regional Office to Hartman on December 1, 2004.

That same day, Teamsters Local 764 made a demand for voluntary recognition of this unit, which demand the Employer refused on December 6, 2004.

Following the Employer's refusal to grant voluntary recognition, Bentley and some employees again met with Hartman on December 13, 2004, at the Local 764 hall. At that time, Hartman told the employees that based on the case he had received from the Regional Office, he believed that the Teamsters could not represent them. Hartman told the employees that they had two choices: either to find a guard union willing to represent them, or to form their own union.

The employees then had a short discussion among themselves and informed Hartman that they were going to form their own union. During the conversation, Hartman told the

⁷ Hartman is also the Secretary-Treasurer of the Local.

employees that he would help them form a union, and point them in the right direction. He told them that they should pick a name, select officers, and set up a dues structure.

Hartman further told the employees that he could not commit any resources from Teamsters Local 764 to them. However, Hartman offered to act as a consultant to them in contract negotiations on his own personal time. Hartman also said that he would get them the phone number for the Regional Office, and in fact, he dialed the Regional Office for them. A Board Agent, Bentley and Hartman then participated in a three-way conversation. During the conversation, Bentley provided information to the Board Agent to enable the Board Agent to prepare a representation petition.

Since December 13, 2004, Bentley has had no further contact with Hartman or any other official associated with the Teamsters. The Teamsters have not offered the Petitioner any financial support, any meeting rooms, or any clerical assistance. Neither Bentley, nor any subject employee, holds any position with the Teamsters.⁸

At present, Bentley serves as the acting president of the Petitioner. The Petitioner does not yet have a Constitution or by-laws, and has not yet collected any dues.⁹ If certified, the Petitioner intends to hold an election for officers, create a Constitution and by-laws, and have an election on the appropriate amount of dues, if any. The Petitioner intends to admit only guards to its membership. Bentley testified that the Petitioner would use the services of Hartman as a consultant in contract negotiations, but only if it is legal to do so.

B. Controlling Precedent and Analysis

Section 9(b)(3) states, in relevant part, that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization . . . is affiliated directly or indirectly with an organization which admits to membership, employees

⁸ One of the petitioned-for employees also works for a local police department, and in that capacity is represented by Teamsters Local 764.

⁹ The Petitioner has no assets.

other than guards." Indirect affiliation between a guard union and a nonguard union is established when "the extent and duration of [the guard union's] dependence upon [the nonguard union] indicates a lack of freedom and independence in formulating its own policies and deciding its own course of action." Wells Fargo Guard Services, 236 NLRB 1196, 1197 (1978), quoting The Magnavox Company, 97 NLRB 1111, 1113 (1952). "However, the noncertifiability of a guard union must be shown by definitive evidence. Any less stringent standard would seriously undermine the rights of guards to be represented by a union and of guard unions to represent guards." Lee Adjustment Center, 325 NLRB 375, 376 (1998), citing Children's Hospital of Michigan, 317 NLRB 580, 581 (1995), enfd. sub nom. Henry Ford Health System v. NLRB, 105 F.3d 1139 (6th Cir. 1997).

The Board has long held that a petitioner may be certified as a representative of a guard unit even if it has received assistance in organizing from a union which admits nonguard employees to membership, where such assistance has been limited to the petitioner's formative stages. Thus, no indirect affiliation was found in Inspiration Consolidated Copper Company, 142 NLRB 53 (1963) (assistance in soliciting authorization cards); Westinghouse Electric Corporation, 96 NLRB 1250 (1951) (chief steward participated in organizational meeting); The Midvale Company, 114 NLRB 372 (1955) (assistance in preparation of unfair labor practice charges and selection of attorney); International Harvester Company, 81 NLRB 374 (1949) (free use of meeting hall); and Brooklyn Piers, Inc., 88 NLRB 1364 (1950) (sharing of office space). The Board historically has "refused to find indirect affiliation where, on the record, it appeared that the assistance and advice once received by the guard union from the nonguard union had, in fact, terminated." International Harvester Co., 145 NLRB 1747, 1749 (1964) (footnote citations omitted).

The facts of this case disclose that the assistance offered by the Teamsters was limited to the Petitioner's formative stage. Specifically, once the Teamsters decided that they could not represent the petitioned-for employees, the assistance they provided was limited to placing a

call to the Regional Office, participating in a three-way conversation during which the Board Agent obtained the information to prepare a representation petition on behalf of the Petitioner, and telling the employees to pick a name, select officers, and set up a dues structure. There has been no further contact between the Teamsters and the Petitioner since that time. Thus, the record affirmatively establishes that as soon as the Petitioner completed the initial steps to form a union, it ceased any contacts it had with the Teamsters. See Lee Adjustment Center, supra.

The Board's decision in Stewart-Warner Corp., 273 NLRB 1736 (1985), on which the Employer primarily relies, is distinguishable. In that case, unlike here, there was no evidence that the nonguard union's assistance had ceased. To the contrary, the evidence showed that a Teamsters local filed and then withdrew a representation petition. Following this, the individual who ultimately became the guard union president was told that the Teamsters had "encountered a problem because security guards had to be organized by a union which represents only guards" and a Teamsters business agent and organizer told the future guard union president that the Teamsters wanted him to "take off where they left off." Significantly, in the months preceding the hearing in that case, the Petitioner took almost no action independent of the Teamsters. Under those circumstances, the Board concluded that the extent and duration of the Petitioner's dependence on the Teamsters indicated a lack of freedom and independence in formulating its own policies and supported a finding that the Petitioner in that matter was indirectly affiliated with the Teamsters. In this case, unlike Stewart-Warner, the Petitioner has had no contact with the Teamsters since it decided to form its own independent union, and the assistance rendered by the Teamsters to the Petitioner herein was significantly less than that involved in Stewart-Warner.

Finally, to the extent that the Employer relies on the Petitioner's expressed interest in using the services of Hartman as a consultant in labor negotiations if such a procedure is "legal," this does not establish an affiliation sufficient to withhold certification. Rather, in the

event that the Petitioner is certified and is then shown to have accepted material assistance from the Teamsters sufficient to constitute indirect affiliation, I will entertain an appropriate motion to revoke the certification. See Bonded Armored Carrier, Inc., 195 NLRB 346, 346 fn. 2 (1972).

III. THE SUPERVISORY STATUS OF THE SERGEANTS

As set forth above, the Employer contends, contrary to the Petitioner, that the two sergeants employed by the Employer must be excluded from the petitioned-for unit in that they are supervisors within the meaning of Section 2(11) of the Act. As explained more fully below, I find that the Employer has failed to sustain its burden of proving that the duties performed by the sergeants are indicia of supervisory status.

A. The Public Safety Department

As described above, the Public Safety Department includes Director DeCerchio, two lieutenants, two sergeants, six regular officers, and seven on-call officers, as well as dispatchers addressed separately below. The Department is staffed seven days a week, 24 hours a day, using basically two shifts. In general, the day shift¹⁰ is staffed by one lieutenant,¹¹ at times one sergeant, and two officers. The night shift consist of one lieutenant,¹² one or two sergeants,¹³ and three or four officers.¹⁴ At times, a lieutenant may be scheduled to work, but not a sergeant. Conversely, at other times, a sergeant may be scheduled to work, but not a lieutenant. And finally, at times, there is neither a lieutenant nor a sergeant scheduled to work.

¹⁰ The Public Safety Department operates on 8 or 12 hour shifts.

¹¹ The day shift lieutenant is scheduled to work Monday through Friday.

¹² The night shift lieutenant is scheduled to work Wednesday, Thursday, Friday, Saturday and Sunday nights.

¹³ On Sunday and Monday nights, there is generally no sergeant scheduled to work.

¹⁴ Generally, three officers work Sunday, Monday and Tuesday nights and four officers work on Friday and Saturday nights. On Wednesday and Thursday nights, there are either three or four officers.

The lieutenants primarily handle administrative functions. They respond to inquiries and complaints dealing with the functioning of the Public Safety Department, as opposed to security issues. However, at times, the lieutenants also perform the same duties as the officers. According to the job descriptions, the lieutenants are responsible for a full range of supervisory duties, such as being the supervisor-in-charge, reviewing incident reports, and scheduling overtime in a fair manner. The duties of the sergeants are described more fully below.

One of the two sergeants earns a salary of \$34,985, based on an hourly rate of \$16.82 per hour; the other earns \$34,070, based on an hourly rate of \$16.38 per hour; and Officer Bentley earns \$26,915, based on an hourly rate of \$12.94 per hour.¹⁵ The sergeants, like the officers, are eligible for overtime.

B. Burden of Proof on Supervisory Issues

The Act expressly defines the term "supervisor" in Section 2(11), which provides:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic

¹⁵ As set forth in more detail below, the record reflects that the sergeants have additional responsibilities beyond those of the officers. That fact, however, is not dispositive of the issue presented. Rather, the issue is whether any of those additional responsibilities are sufficient to warrant the exclusion of the sergeants from the petitioned-for unit as supervisors.

Home, 332 NLRB 1409 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Williamette Industries, 336 NLRB 743 (2001); Michigan Masonic Home, supra, at 1409. As the party asserting supervisory status in this matter, the Employer has the burden of proof on this issue.

In asserting that the duties of the sergeants are indicia of their supervisory status, the Employer relies on the following aspects of their work, which are discussed separately below: assignment and review of work, changes in scheduling, training, input on performance, adjustment of grievances, discipline and exercise of independent judgment.¹⁶

C. Assignment and Review of Work

The Employer argues that the sergeants are supervisors because they assign work to the officers and review their work. According to DeCerchio, the sergeants assign duties to officers, such as patrolling particular problem areas, closing buildings, securing areas, looking for problems with lighting, completing investigations, interviewing witnesses, and responding to fire or burglar alarms.¹⁷ Further, in April 2003, DeCerchio issued a memo to "All Public Safety Supervisors," that is, the lieutenants and the sergeants, directing them that they were responsible for ensuring that the officers were properly dressed and neat; for checking the officers' equipment and the vehicles for equipment and condition; for teaching the officers how

¹⁶ With respect to the unit employees involved herein, the Employer does not contend, and the evidence would not support such a contention, that the sergeants possess or exercise the independent authority to hire, transfer, suspend, lay off, recall, promote, or discharge, or effectively to recommend the same.

¹⁷ In connection with the development of a compensation program, employees were surveyed about their duties. Inasmuch as the purpose of the survey was to determine the appropriate compensation that employees would receive, there is a significant risk that employees may have inflated their duties and responsibilities. For this reason, I have given little weight to the sergeants' responses to these surveys.

to properly handle problems and conduct investigations; for ensuring that the officers were patrolling and following departmental policies and procedures; for responding to serious incidents as back-up; for checking and overseeing major incident responses to ensure proper handling and documentation; and for checking all officers' reports for accuracy.

Significantly, the Employer did not show how the responsibilities set forth in the memo are actually delegated between the lieutenants and the sergeants. Further, if both the lieutenants and the sergeants share the responsibility, it cannot be concluded that the sergeants act independently of the lieutenants, without the lieutenants placing limits on the authority of the sergeants. Simply put, it cannot be determined on the record developed herein that the sergeants have significant independent authority over the officers.

Further, the Employer has not established that any assignment or direction given by the sergeants involves the use of independent judgment. Thus, the record does not disclose that the assignment of duties requires anything more than knowing who is available: for example, whether directing an officer to patrol a certain area or close a building is based on anything more than the knowledge that an officer is in that vicinity, and that another officer is responding to a service call elsewhere.

It is well established that an employer's holding out an individual to employees as a supervisor is not necessarily dispositive of supervisory status. Polynesian Hospitality Tours, 297 NLRB 228 (1989), enfd. 920 F.2d 71 (D.C. Cir. 1990). In this case, there is no evidence that the sergeants exercise any authority beyond routine direction of simple tasks or the issuance of low level orders that the Board has found does not constitute supervisory authority. Los Angeles Water & Power Employees' Assn., 340 NLRB No. 146, slip op. at 3 (2003) (routine shifting of employees to get job done); Williamette Industries, Inc., supra at 744.

The Employer also relies on the role of the sergeants in reviewing incident reports as indicia of supervisory authority. The record discloses that any incident, whether an emergency, a criminal matter, or a call for service, must be documented on an incident report, which is

prepared by the responding officer. The report is then reviewed to ensure that it is completed correctly and completely. If the report is not filled out correctly or completely, it is returned to the reporting officer. The reviewing party co-signs the incident report, or the name is typed in, the report is forwarded to DeCerchio for his review, and the report is then distributed to the appropriate personnel.

While the Employer emphasizes that the sergeants review the incident reports, the record discloses that these reports are reviewed by a lieutenant, if available; if a lieutenant is not available, a sergeant does the review; if a sergeant is not available, another officer does the review. Moreover, the review is a check for completeness and accuracy. There is no indication that any personnel action is taken against the officer preparing the report in the event that the report is not completed correctly.

D. Changes in Schedules

The sergeants are involved in four types of changes to work schedules: obtaining coverage, approval of switches, approval of unscheduled leave and the grant of overtime. However, the record does not disclose that the sergeants exercise independent judgment in connection with any of these scheduling matters.

DeCerchio provided the following information. If an officer calls off sick or fails to report, a sergeant calls someone to come in. Officers may switch shifts with each other, subject to approval by the sergeant. Officers can use vacation leave or comp time to leave early or come in late, if work is slow, subject to approval by the sergeant. In addition, the sergeants have authorized overtime.

The Employer did not offer any evidence regarding the frequency of any of these changes. Nor did the Employer show that the sergeant uses independent judgment in obtaining coverage for an absent officer, rather than merely performing a clerical task of going down a roster of names and obtaining a volunteer to come in to work. The record does not show that the sergeants have ever denied any request to switch shifts, or to leave early or come in late, as

opposed to just routinely approving such requests. See Los Angeles Water & Power Employees' Assn., supra (notification of schedule changes not supervisory). Finally, the record does not show that the sergeants may grant overtime without obtaining prior approval from the lieutenant or the Director. Nor does the record disclose whether the sergeants seek volunteers for overtime or whether it is mandated. See Los Angeles Water & Power Employees' Assn., supra (inability to require employees to work outside their scheduled shifts not supervisory).

E. Training

The Employer also asserts that the sergeants' involvement in the training of officers establishes their supervisory status. But, like the scheduling discussed above, the Employer has failed to show that these training activities involve the use of independent judgment on the part of the sergeants.

The sergeants are involved in the field training and orientation of new officers, and in the completion of a competency checklist on new officers.¹⁸ An officer testified that during his orientation, he rode with lieutenants, sergeants and other officers, and that his checklist was initialed by both a sergeant and a lieutenant. The record does not show that the checklist is anything more than that: a list to ensure that the officers have displayed competency in the designated areas; there is no evidence that the checklist results in any personnel action affecting the officer's wages or job status.¹⁹

One of the sergeants, Sergeant Jonathan Weaver, is also in charge of baton training and certifies that the officers have completed the training. The Employer offered no evidence describing this training, and one officer testified that his training consisted of only reading a manual and taking a written test. The Employer, through cross-examination, established that

¹⁸ Apparently, at the time the checklist was instituted, the then-current officers were also checked on the listed criteria.

¹⁹ In this regard, the checklists appear similar to the performance reviews discussed in the text below.

the officer had received baton training through the police academy before his hire by the Employer, and that the sergeant likely was aware of this.

Finally, Sergeant Weaver also developed and oversees a bike patrol program. The Employer offered no detailed evidence about this program. According to an officer, this program consists of two officers patrolling on bikes and involves no separate training.

The Board has held that the training of employees and determining their competency for a test that might lead to a wage increase does not, without more, establish supervisory status. F.A. Bartlett Tree Expert Co., 325 NLRB 243, 243 fn. 1 (1997). The same conclusion must follow in this case.

F. Performance Input

The Employer further cites several examples of sergeants giving input on the performance of the officers as indicators of supervisory status. For the reasons set forth below, the cited examples are inadequate to establish that the sergeants are statutory supervisors.

The Employer relies on the fact that, in the past, the sergeants completed performance reviews of the officers with whom they worked. In the performance reviews, the employee was given a numerical rating in certain areas, and an average score was then computed. However, the last time the sergeants completed such reviews was April 2000; thereafter the program lapsed until July 2004. At that time, the officers were asked to do a self-evaluation, without any involvement of the sergeants, which DeCerchio reviewed.

Related to the completion of these reviews, the sergeants were required to attend a mandatory training session entitled "Mastering Performance Review", which was described as a training program for department heads, managers and work leaders who provide feedback to staff members and students about their job performance.

Significantly, these reviews were not used in determining wage increases or job status. Rather, they were used solely to identify areas where corrective action was needed. Board law is clear that in order for individuals to be supervisors based on their authority to evaluate

employees, their evaluations must be shown to directly affect and effectively recommend changes in the rated employees' job status, e.g., wage increases, extended probationary periods, or termination. Williamette Industries, Inc., supra at 743-744.

The Employer also notes that the sergeants reward officers by recommending that they receive letters of commendation from DeCerchio. These letters of commendation, however, do not affect job status. Further, DeCerchio recalled that on one occasion, a sergeant sent an officer home with pay, to reward him for doing a particularly good job, but DeCerchio could not recall any specifics of the incident. Thus, it is not known whether the sergeant had first obtained the approval of the lieutenant before sending the officer home.

The Employer also cites the fact that at the conclusion of the 90-day probationary period, the sergeants recommend whether the probationary officers should be retained. The lieutenants also recommend whether the probationary officers should be retained. In addition to their own recommendations, the sergeants also solicit the opinion of the other officers as to whether the probationary officers should be retained. While DeCerchio testified that the recommendations of the supervisors are given greater weight than the opinions of the fellow officers, he could not recall any time when the recommendations of the lieutenants and the sergeants as to a particular probationary employee differed. On this sparse record, it cannot be determined that the sergeants, as opposed to the lieutenants, effectively recommend retention. See Los Angeles Water & Power Employees' Assn., supra (participation of admitted supervisors in hiring process negated supervisory status).

G. Adjustment of Grievances

DeCerchio testified that the sergeants deal with complaints from officers regarding vehicles, shifts, working conditions and working deficiencies by, if appropriate, correcting problems or making recommendations to DeCerchio. The Employer gave no specific examples of the types of problems raised or how they were resolved.

Although the Employer asserts that this is adjustment of grievances within the statute, without any further details, it cannot be determined whether the sergeants' actions constitute an adjustment of grievances within the meaning of the Act. See Ken-Crest Services, 335 NLRB 777, 779 (2001) (evidence supports only limited ability to resolve minor disputes).

H. Discipline

In support of its contention that the sergeants discipline officers, the Employer relies upon testimony that the sergeants issue verbal reprimands, testimony that a sergeant sent an officer home, an August 29, 2000 written discipline, and two December 31, 2004 written disciplines arising from the same incident.

Specifically, DeCerchio testified that the sergeants have issued verbal reprimands, but he provided little other information. Significantly, there is no indication that any such verbal reprimands were documented, or were considered as part of the Employer's formal disciplinary process, as opposed to counseling or coaching. See Los Angeles Water & Power Employees' Assn., supra (verbal warnings not supervisory); Ken-Crest Services, supra at 778 (same).

In addition, DeCerchio testified that on one occasion, about two years ago, a sergeant sent home an officer who was working day shift, because the officer was not performing his duties. According to DeCerchio, the sergeant informed him that he had done this after the fact. Critically, on this record, it cannot be determined what role, if any, the lieutenant played in this decision. See Michigan Masonic Home, 332 NLRB 1409, 1410 (2000) (insufficient evidence to support claim of sending employees home).

The record also contains an August 29, 2000 letter of warning signed by a sergeant to an officer, for failure to fully complete an assignment. However, the record contains no evidence of the circumstances under which the document was completed; that is, what role, if any, the lieutenant played in the initiation of the discipline, in investigating the underlying incident, in determining the level of discipline, in the actual drafting of the letter, in presenting the discipline, and generally, as to how the sergeant came to sign the letter.

Finally, the record contains two written disciplines issued on December 31, 2004. Unlike the absence of evidence of the circumstances surrounding the August 2000 discipline, there is considerable evidence concerning the circumstances of the December 31, 2004 discipline. Unfortunately, the testimony is somewhat unclear and inconsistent.²⁰

It appears that this discipline had its origin in an e-mail from a student complaining that an officer and a student who supervises student security workers had entered his locked car to retrieve a piece of equipment. The e-mail was sent to either both Sergeant Ricky Phillips and a lieutenant, or to Sergeant Phillips who forwarded the e-mail to the lieutenant. It also appears that the sergeant indicated that he thought some action should be taken.

According to DeCerchio, the lieutenant forwarded the e-mail to DeCerchio. Since Sergeant Phillips wanted action taken, DeCerchio suggested to the sergeant that he write a warning²¹ noting the inappropriate behavior, and submit it to Human Resources for their review, as is the standard procedure. Sergeant Phillips did so, then met with the officer and Student Security Supervisor and gave each of them a copy of the letter.

Considering this discipline, I note that the record establishes that both DeCerchio and the lieutenant were directly involved in the matter, in addition to Sergeant Phillips. With the involvement of so many individuals, it is difficult to conclude that Sergeant Phillips exercised independent judgment. Also, the discipline was written December 31, 2004, after the petition had been filed. Thus, there exists the possibility that the degree of involvement of Sergeant Phillips in the discipline may have been influenced by the pendency of the petition.

²⁰ For example, DeCerchio initially testified that Sergeant Ricky Phillips said that he was going to write a letter of reprimand, but on cross-examination, DeCerchio acknowledged that he (DeCerchio) indicated to Phillips that Phillips might want to issue a written warning, and in response to questions by the Hearing Officer, DeCerchio testified that he (DeCerchio) advised Phillips to make it a letter of warning.

²¹ Inconsistencies in the testimony on this point are discussed in the preceding footnote.

For these reasons, I find that the December 31, 2004 discipline, even when considered in connection with the other discipline discussed above, is insufficient to confer supervisory status.

I. Independent Judgment

The Employer cites two other purported examples of the sergeants' exercise of independent judgment as indicia of supervisory authority: the compilation of crime statistics and the administration of a student security worker program. These examples, however, do not establish supervisory status.

Sergeant Weaver is designated as the UCR (Uniform Crime Report) officer, and in this capacity is responsible for compiling an annual report of all the crime statistics. There is no evidence, however, that Sergeant Weaver's responsibilities in this regard have any impact on the status of the officers in any way.

In addition, DeCerchio testified that Sergeant Phillips is responsible for supervising student security workers. The record discloses that the Employer has a student security worker program. Under this program, student security workers are trained to lock up buildings, to conduct tours, to make sure that doors and windows are locked, and that classrooms are opened or closed. The Employer employs about ten to 12 such student security workers during the school year, and about four such workers when school is not in session.²²

These students report to a student who is designated as the Student Security Supervisor. DeCerchio testified that Sergeant Phillips is in charge of this program, responsible for hiring the student workers, disciplining them, and discharging them.

The Board has recognized that the authority to exercise supervisory acts can make an individual a supervisor even if such acts apply to non-bargaining unit employees. Detroit

²² The parties are in agreement that the student security workers should be excluded from any unit found appropriate herein, in that they do not share a community of interest with the petitioned-for guards.

College of Business, 296 NLRB 318, 321 (1989). In Detroit College of Business, the Board held that:

[T]o ascertain whether an individual's exercise of supervisory authority over employees outside the unit warrants his exclusion as a supervisor, we must make a complete examination of all the factors present to determine the nature of the individual's alliance with management. Relevant factors to be considered will include, but not be limited to, the business of the employer, the duties of the individuals exercising supervisory authority and those of the bargaining unit employees, the particular supervisory functions being exercised, the degree of control being exercised over the nonunit employees, and the relative amount of interest the individuals at issue have in furthering the policies of the employer as opposed to those of the bargaining unit in which they would be included.

In making this determination, however, the Board has considered whether the supervision of non-unit employees is "part and parcel of [the individual's] 'primary work product' rather than an ancillary part of their duties. " Detroit College of Business, supra at 321.

In this case, the Employer has cited Sergeant Phillips' work with the student security program as an example of the exercise of independent judgment, but has not argued that he is a supervisor under Detroit College of Business. Moreover, the record evidence is not sufficient to support a finding that Sergeant Phillips' work with the student security program is part and parcel of his primary work product, and that he is so allied with management as to establish a differentiation between him and the other unit employees.

In this regard, it is noted that there is a Student Security Supervisor, who apparently is the first line of supervision. Further, the record does not disclose the particulars of the hiring process for student security workers, e.g. whether the Employer has specific detailed hiring criteria. Nor does the record disclose any information from which it can be concluded that Sergeant Phillips exercises independent judgment in discharging student workers. In this regard, it is noted that the December 31, 2004, discipline issued by Sergeant Phillips arose from this program, with one letter issued to the Student Security Supervisor, and the record is far from clear that Sergeant Phillips acted independently in connection therewith. Finally, the record suggests that the lieutenants may be involved in the supervision of the program, since

one of the duties listed on the night shift lieutenant's job description is "to supervise and coordinate the Public Safety staff and student security aides during the night shift."

Based on this record, the Employer has not sustained its burden of proving that Sergeant Phillips' involvement with the non-unit employees makes him a statutory supervisor under Detroit College of Business.

J. Concluding Analysis

Based on the above, and the record as a whole, I find that the Employer has not sustained its burden of proving that the sergeants are supervisors under the Act. The record evidence fails to establish that the sergeants perform any of the statutory indicia of supervisory status. Specifically, their involvement in the assignment and review of work, in changing schedules, in training, in providing input on performance, in the adjustment of so-called grievances, and in discipline has not been shown to involve the exercise of judgment independent of close oversight by the lieutenants, who are admitted supervisors. Moreover, some of the activities on which the Employer relies, such as reviewing incident reports and providing input on the retention of probationary employees, are also performed by unit employees. Finally, other activities on which the Employer relies, such as providing input on performance evaluations and recommending letters of commendation, have no impact on the job status of the unit employees.

Further, the additional duties performed by Sergeant Weaver in serving as the UCR officer and by Sergeant Phillips in connection with the student security program do not establish supervisory status.

For all of these reasons, I find that the sergeants are not supervisors and I shall include them in the guard unit found appropriate herein.

IV. THE GUARD STATUS OF THE DISPATCHERS

The Employer, contrary to the Petitioner, asserts that the dispatchers are not guards within the meaning of the Act, and therefore must be excluded from the petitioned-for unit.

A. Facts

The record discloses that the Employer employs four regular and three on-call dispatchers, who report to dispatch supervisor Nancy Reeser. As noted, Reeser reports to Director DeCerchio. Normally, there is one dispatcher on duty, except on Wednesday, Friday and Saturday nights, when Reeser frequently assists as a second dispatcher. When Reeser is off-duty, she may be contacted by pager or cell phone. If Reeser is unavailable, the dispatchers report to the shift sergeant.

Dispatchers answer the phone, provide information to callers, process calls and pass them on to the appropriate person. The dispatchers answer a wide variety of calls from students and others: requests for information, such as hours of library operation; reports of a complaint; reports of a crime in progress; requests for an officer; calls for service, such as a mechanical or facilities problem like a water leak. The dispatchers process the calls, and dispatch officers, or call local police, fire or EMS, as appropriate.

If an officer needs assistance from the local police, fire or EMS departments, the officer contacts dispatch, and the dispatcher makes the call. If an officer is engaged in an activity such as searching a building or making a vehicle stop, and has not been in contact with dispatch for a while, the dispatcher will attempt to contact the officer to ensure that the officer is all right. If the dispatcher is unable to contact the officer, the dispatcher may contact another officer to check on the officer who has not responded.

The dispatchers record all significant incoming calls on the computer. If the call results in an officer later completing an incident report, the information recorded by the dispatcher becomes the initial portion of the incident report. In the event of a call from a student needing medical transport, the dispatchers complete an incident report. The dispatchers have been trained on how to handle bomb threats, with specific regard to the type of information they should obtain. They fill in for the telephone operators when the operators are off duty.

In addition to answering the phones, the dispatchers monitor alarms, such as fire and intrusion alarms. They also monitor the camera in the tunnel under a local roadway for crime, accidents or any other problem; and they monitor the camera in the lobby of the Public Safety office. If needed, they can monitor a camera in the detention area, although there is no evidence that this has occurred.

The dispatchers maintain and issue master keys to student security workers. They generate and maintain the daily log of criminal incidents based on their review of the officers' incident reports. In addition, they act as a receptionist when the office is closed.²³

The dispatchers work in the same office area as the officers, although they each have separate offices connected by a 15 foot long hallway. The dispatchers wear either a gray uniform shirt, with two patches on each sleeve, and a badge and name tag, or wear a T-shirt with the public safety insignia on one side and their name on the other.²⁴ The dispatchers are in the same pay range as the officers. The dispatchers are trained in first aid, CPR, use of defibrillators, and hazmat.

B. Controlling Precedent and Analysis

Board law uniformly holds that employees performing duties substantially similar to those performed by the dispatchers herein, are guards under the Act. Rhode Island Hospital, 313 NLRB 343, 347 (1993) (monitor cameras, receive calls, monitor alarms, distribute keys). As the Board noted in that case:

The fact that dispatchers do not personally confront employees or others, but rather merely report violations, does not defeat their guard status. Because the dispatchers' authority to observe and report infractions is not merely incidental to their other duties, but instead constitutes one of their primary responsibilities which is an essential link in the Hospital's effort to safeguard its employees and enforce its rules, the dispatchers are guards. A. W. Schlesinger Geriatric Center,

²³ This is apparently a reference to the University's administrative office.

²⁴ The officers wear a light blue uniform shirt with sleeve patches and navy trousers.

[267 NLRB 1363 (1983)] at 1364; Crossroads Community Correctional Center, 308 NLRB 558, 562 (1992).

The line of cases cited by the Employer dealing with receptionists, Hoffman Security, 302 NLRB 922 (1991); Guards Union Local 79 (ICI Americas), 297 NLRB 1021, 1023 (1990); Ford Motor Co., 116 NLRB 1995, 1997 (1956) are inapposite. In contrast to those cases, here the Employer employs receptionists and telephone operators. It is only in the absence of those other employees that the dispatchers assume their functions. In this case, the primary function of the dispatchers is to participate in the enforcement of rules against employees and others to protect the property of the Employer's premises. Further, in this case, not only are the dispatchers guards within the meaning of the Act, but also, since the dispatchers are in the same administrative department as the Employer's public safety officers, work in close physical proximity to the officers, perform duties which are functionally integrated with those of the officers, and have the same pay scale as the officers, the dispatchers share a community of interest with the officers which warrants their inclusion in the same bargaining unit.

V. THE ELIGIBILITY OF ON-CALL EMPLOYEES

In addition to its regular officers and dispatchers, the Employer employs seven on-call officers and three on-call dispatchers. The Petitioner contends that on-call Officer Dawn Hubbard and on-call dispatchers Rochelle Blue and David Miller are eligible voters. Contrary to the Petitioner, the Employer contends that all of the on-call officers and dispatchers must be excluded since they do not share a community of interest with the regular officers and dispatchers, even if they worked an average of 4 or more hours per week in the quarter preceding the eligibility date.

The record discloses that the on-call employees are either placed on the monthly schedule along with the regular employees, or are called in as needed. Most of the Employer's on-call employees are employed full-time elsewhere and can refuse to work. It appears from the record that the on-call employees perform the same work as the regular officers and

dispatchers, that the on-call employees work along side the regular employees, and that they share the same supervision. The Employer does not argue to the contrary. Rather, the Employer argues that because the on-call employees work on an as-needed basis, are able to refuse work, and by virtue of their reduced hours, are ineligible to receive benefits,²⁵ the on-call employees have different terms and conditions of employment than the regular employees.

"Under the Board's longstanding and most widely used test for voter eligibility in these circumstances, an on-call employee is found to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages 4 or more hours of work per week for the last quarter prior to the eligibility date." Saratoga County Chapter NYSARC, 314 NLRB 609 (1994). See Davison-Paxon Company, 185 NLRB 21, 23-24 (1970) and Trump Taj Mahal Casino, 306 NLRB 294 (1992). The fact that the Employer's on-call employees can decline work, or are unscheduled, does not defeat their status as eligible voters. See Arlington Masonry Supply, Inc., 339 NLRB 817, 820 (2003).

Applying this 4-hour criteria to the employees at issue, the Employer's payroll records in evidence disclose that Officer Hubbard, and dispatchers Blue²⁶ and Miller worked sufficient hours to make them eligible to vote in the election directed herein.

²⁵ Although the Employer, in its post-hearing brief, asserts that the on-call employees operate under a different wage schedule, the evidence does not support this contention. The documents that the Employer cites in support of its contention were received in the record to show the hours of the on-call employees, and there was no testimony proffered about their wage schedule. Although the record evidence reveals a different hourly rate for Officer Hubbard (\$10.99 per hour) than Officer Bentley (\$12.94 per hour), the record does not reveal the reason for this difference. Further, the record does not reveal any examples of regular dispatchers' actual rates of pay with which to compare the rates paid to dispatchers Blue and Miller.

²⁶ Contrary to the Employer's assertion in its post-hearing brief, the payroll records in evidence disclose that Blue exceeds the 4-hour rule. The records indicate that in the final 12 weeks of the payroll year, Blue worked a total of 39 hours. In the preceding 2 week payroll period (pay period 20), Blue averaged 14 hours per week. Hence, in the 13 weeks preceding the hearing for which payroll records are in evidence, Blue averaged 4.07 hours. Thus, I find her eligible to vote in the election directed herein.

VI. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time public safety officers and communications officers, including sergeants, employed by the Employer at its Lewisburg, Pennsylvania facility; excluding all office clerical employees, the administrative lieutenants, the communications supervisor and professional employees and other supervisors as defined in the Act, and all other employees.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Bucknell Department of Public Safety Union. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not

work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **February 25, 2005**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **March 4, 2005**. The request may **not** be filed by facsimile.

Dated: February 18, 2005

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

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